Strong

Affirmed, Nelson

TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

No. 329.

JAMES BUFFINGTON, LATE COLLECTOR OF INTERNAL REVENUE, PLAINTIFF IN ERROR,

vs.

JOSEPH M. DAY.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF MASSACHUSETTS.

FILED DECEMBER 5, 1870.

SUPREME COURT OF THE UNITED STATES.

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1 UNITED STATES, *ss:*

[SEAL.] The President of the United States to the judges of the circuit court holden in and for the district of Massachusetts, greeting:

Because that in the record and process, and also in the rendering of judgment in a suit before you, or some of you, between Joseph M. Day, of Barnstable, in said district, plaintiff, and James Buffington, of Fall River, in said district, defendant, in a plea of an action of contract, a manifest error has intervened to the great damage of the said James Buffington, as in his complaint has been stated. And as it is just and proper that the error, if any there be, should be corrected in due manner, and that full and speedy justice should be done to the parties aforesaid in this behalf, you are hereby commanded that, if judgment thereof be given, then under your seal you do distinctly and openly send the record and process in the suit aforesaid, with all things concerning them, and this writ, so that you have the same before the Chief Justice and associate justices of the Supreme Court of the United States, on the first Monday of December next, at Washington, being the present seat of the National Government, that the record and process aforesaid being inspected, they may cause to be done thereupon what of right ought to be done.

Witness the Honorable Salmon P. Chase, esquire, Chief Justice of the said Supreme Court, at Washington aforesaid, this sixteenth day of September, in the year of our Lord one thousand eight hundred and seventy, and of the independence of the United States the ninety-fifth.

JOHN G. STETSON, *Clerk.*

Allowed by—

NATHAN CLIFFORD,
Asso. Jus. U. S. Sup. Ct.

2 Circuit court of the United States, Massachusetts district, ss:

And now here the judges of the circuit court of the United States in and for the said district make return of this writ by annexing hereto and sending herewith, under the seal of the said circuit court, a true and attested copy of the record and process in the suit within-mentioned, and of all proceedings therein.

In testimony whereof I, John G. Stetson, clerk of said circuit court of the United States, within and for the district of Massachusetts, have hereunto set my hand and the seal of said court this twenty-third day of November, A. D. 1870.

[SEAL.] JOHN G. STETSON, *Clerk.*

3 UNITED STATES OF AMERICA,
Massachusetts District, ss:

At a circuit court of the United States for the first circuit, begun and holden at Boston, within and for the district of Massachusetts, on Monday, the sixteenth day of May, in the year of our Lord one thousand eight hundred and seventy, the fifteenth day of said May happening on a Sunday.

Before the Honorable Nathan Clifford, associate justice, and the Honorable George F. Shepley, circuit judge.

JOSEPH M. DAY, PLAINTIFF,
v.
JAMES BUFFINGTON, DEFENDANT.

Upon the complaint of James Buffington, a writ of certiorari
4 was issued in the words following, namely:

{ SEAL } UNITED STATES OF AMERICA,
{ CIR. CT. } *Massachusetts District, ss:*

The President of the United States to the honorable the judges of the superior court of the Commonwealth of Massachusetts, within and for the county of Barnstable, at Barnstable, in the State of Massachusetts, greeting:

We being willing, for certain causes, to be certified of the record and proceedings upon the complaint of Joseph M. Day, of Barnstable, in said district, against James Buffington, esquire, late collector of the internal revenue of the United States within and for the first district of Massachusetts, "in an action of contract," made returnable before the said superior court on the first Tuesday of April, 1869, which suit is represented to us to have been brought for or on account of certain acts done under the revenue laws of the United States, or under color thereof, command you that the said record and proceedings, with all things touching the same, fully and entirely as the same remain before you, by whatever names the parties are called therein, you send so that you have the same before the judges of our circuit court of the United
5 States, next to be holden at Boston, in said district of Massachusetts, on the fifteenth day of May next, under your hand and seal, together with this writ, that we may thereupon cause to be done what of right and according to law ought to be done.

Witness the Honorable Salmon P. Chase, at Boston, the sixteenth day of April, in the year of our Lord one thousand eight hundred and sixty-nine.

JOHN G. STETSON, *Clerk.*

Whereupon the following return was made, namely:

COMMONWEALTH OF MASSACHUSETTS, *Barnstable, ss:*

SUPERIOR COURT.

And now here the judges of said superior court in and for said county, make return of this writ by annexing hereto, and sending herewith, under the seal of said superior court, and pursuant hereto, a true and attested copy of the record and process in the suit within mentioned, and of all things touching the same.

In testimony whereof I hereunto set my hand and affix the seal of said superior court, at Barnstable, in said county, this thirtieth day of April, A. D. 1869.

[SEAL SUP'R COURT.] JAMES B. CROCKER, *Clerk.*

{ SEAL SUP'R COURT. } COMMONWEALTH OF MASSACHUSETTS,
Barnstable, ss:

At the superior court begun and holden at Barnstable, within
6 and for the county of Barnstable, on the first Tuesday of April, A. D. 1869.

Honorable Henry A. Scudder, justice.

JOSEPH M. DAY } Day.
v. } No. 64.
JAMES BUFFINGTON. } G. S. Hillard.

Dec'n filed with writ; aff't filed 1st day & an'd.

The above-entitled action was duly entered at the April term of superior court for said county, and the above is a true copy of the docket of said court, relating to all the proceedings therein.

Attest: JAMES B. CROCKER, *Clerk.*

COMMONWEALTH OF MASSACHUSETTS, *Barnstable, ss:*

[L. S.] To the sheriffs of our several counties, or their deputies, greeting:

We command you to attach the goods or estate of James Buffington, of Fall River, in the county of Bristol, United States collector of internal revenue for the first congressional district in said commonwealth, to the value of three hundred dollars, and summon the said defendant, (if he may be found in your precinct,) to appear before our justices of our superior court next to be holden at Barnstable, within and for the said county of Barnstable, on the first Tuesday of April next, then and there in our said court to answer unto Joseph M. Day, of Barn-
7 stable, in said county of Barnstable, judge of probate & insolvency for said county of Barnstable, in an action of contract, to the damage of the said plaintiff, (as he say,) the sum of three hundred dollars, which shall then and there be made to appear, with other due damages. And have you there this writ, with your doings therein.

Witness Lincoln F. Brigham, esquire, at Barnstable, the sixteenth day of February, in the year of our Lord one thousand eight hundred and sixty-nine.

JAMES B. CROCKER, *Clerk.*

A true copy.
[SEAL SUP'R COURT.] Attest: JAMES B. CROCKER, *Clerk.*

Officer's return.

BRISTOL, *ss:*

FALL RIVER, *February 17th*, 1869.

By virtue of this writ I this day attached a chip as the property of the within-named James Buffington, and at the same time delivered to him in hand, a summons of this writ for his appearance at court as within directed.

JAMES WEXON,
Deputy Sheriff.

One service	50
Travel & R. writ	2 80
	$3 30

A true copy of the officer's return.
Attest: JAMES B. CROCKER, *Clerk.*

Declaration filed with the writ.

8 And the plaintiff says the defendant was the collector of the internal revenue for the United States for the first congressional district in said Commonwealth, for the year 1866; that the United States assessor for said district, against the protests & objections of the plaintiff, unlawfully assessed upon his salary as a judicial officer of said Commonwealth for said year 1866, the sum of sixteen & $\frac{50}{100}$ dollars; that after said assessment, the defendant, against the written protests & objections of the plaintiff, collected of the plaintiff the amount assessed as aforesaid.

And the plaintiff alleges that he has in all respects complied with the provisions of the internal revenue laws of the United States before bringing his action, and the defendant owes the plaintiff said sum of sixteen $\frac{50}{100}$ dollars.

And the plaintiff further says that the defendant was the collector of the internal revenue for the United States for the first congressional district in said Commonwealth for the year 1867; that the United States assessor for said district, against the protests & objections of the plaintiff, unlawfully assessed upon his salary as a judicial officer of said Commonwealth for said year 1867, the sum of forty-five dollars; that after said assessment the defendant, against the written protests &
9 objections of the plaintiff, collected of the plaintiff the amount assessed as aforesaid.

And the plaintiff alleges that he has in all respects complied with the provisions of the internal revenue laws of the United States before bringing his action, and the defendant owes the plaintiff said sum of forty-five dollars.

And the plaintiff further says, that the defendent owes him the sum of sixty-one $\frac{50}{100}$ dollars for money had & received by him to the plaintiff's use.

Specification of claim.

And the plaintiff says that the defendant was the collector of the internal revenue for the United States for the first congressional district in said Commonwealth during the years 1866, & 1867; that the United States assessor for said district, against the protests and objections of the plaintiff, unlawfally assessed upon his salary as a judicial officer of said Commonwealth, the sum of sixteen dollars & fifty cents, for the year 1866, and the sum of forty-five dollars for the year 1867; that after said assessments the defendant, against the written protests & objections of the plaintiff, collected of the plaintiff the amount assessed as aforesaid.

A true copy.
[SEAL SUP'R C'T.] Attest: JAMES B. CROCKER, *Clerk.*

10 *Affidavit of merits.—Filed April 6th*, 1869.

COMMONWEALTH OF MASSACHUSETTS, *Barnstable, ss:*

The superior court, April term, 1869.

JOSEPH M. DAY, JUDGE OF PROBATE, &C., plaintiff, *vs.* JAMES BUFFINGTON, DEFENDANT. } Affidavit of merits.

I, W. A. Field, in behalf of said defendant in the above-entitled ac-

tion, on oath say, that I verily believe that he has a substantial defence to said on its merits, and that intends to bring the same to trial.

W. A. FIELD.

SUFFOLK, *ss:*

FEBRUARY 18TH, 1869.

Subscribed and sworn to before me.

G. S. HILLARD,
Justice of the Peace.

A true copy.
Attest: JAMES B. CROCKER, *Clerk.*

This cause was duly entered here at the May term of this court, A. D. 1869, when and where the parties appeared by their respective
11 attorneys, and on the seventeenth day of May, A. D. 1869, the following agreed statement of facts was filed and made part of the record, namely:

This is an action of contract, brought by the plaintiff against the defendant to recover the amount of taxes assessed under the internal revenue laws of the United States upon the plaintiff's salary as judge of probate and insolvency for the county of Barnstable, in the Commonwealth of Massachusetts, and for the purpose of this trial it is agreed:

That the plaintiff was, during the years eighteen hundred and sixty-six and eighteen hundred and sixty-seven, a judicial officer of said Commonwealth, to wit, a judge of the court of probate and insolvency for said county of Barnstable, which said court is a court of record;

That the defendant was, in the year eighteen hundred and sixty-seven, the United States collector of internal revenue for the first congressional district in said Commonwealth, and that said county of Barnstable is within said first congressional district;

That in said years eighteen hundred and sixty-six and eighteen hundred and sixty-seven the United States assessor of internal revenue for said first congressional district, against the written protests of
12 the plaintiff, made before assessment, assessed upon his salary as judge as aforesaid, taxes amounting in all to sixty-one and fifty one-hundredths dollars;

That, against the written protests of the plaintiff, before collection thereof delivered to the defendant, the defendant collected said taxes of the plaintiff;

That the plaintiff's salary as judge, as aforesaid, is fixed by law, and is payable out of the treasury of said Commonwealth, and that the plaintiff has in all respects complied with the provisions of the revenue laws of the United States prescribing the conditions under which actions may be brought for the recovery of taxes illegally assessed under said laws.

If plaintiff's said salary is legally the subject of taxation by the United States, the defendant is to have judgment; otherwise judgment is to be for the plaintiff for sixty-one and fifty one-hundredths dollars.

DWIGHT FOSTER,
Plaintiff's Attorney.
JOHN C. ROPES,
Ass't U. S. Attorney.

This cause thereupon came on to be heard by the court—the Hon-

orable Nathan Clifford, associate justice, and the Honorable John Lowell, district judge, sitting—and was argued by counsel, and
13 thence the same was continued under advisement from term to term to this present term, when the court—the Honorable Nathan Clifford, associate justice, and the Honorable John Lowell, district judge, sitting—being of the opinion that judgment should be entered for the plaintiff, it is considered by the court, to wit, September 6th, 1870, that the said Joseph M. Day, plaintiff, recover of the said James Buffington, defendant, the sum of sixty-one dollars and fifty cents damages and his costs of suit, taxed at

A true record.
Attest: JOHN G. STETSON, *Clerk.*

14 UNITED STATES OF AMERICA,
Massachusetts District, ss:

I, John G. Stetson, clerk of the circuit court of the United States for the first circuit and district of Massachusetts, do hereby certify that the foregoing is a true copy of the record and of all proceedings in the cause of Joseph M. Day, plaintiff, v. James Buffington, defendant, in this court determined.

In testimony whereof I have hereunto subscribed my name and affixed the seal of said court at Boston, in said district, this twenty-third day of November, in the year of our Lord one thousand eight hundred and seventy, and of the independence of the United States the ninety-fifth.
[SEAL.] JOHN G. STETSON, *Clerk.*

15 The United States of America to Joseph M. Day, of Barnstable, in the district of Massachusetts, greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States to be holden at Washington on the first Monday of December next, pursuant to a writ of error filed in the clerk's office of the circuit court of the United States for the first circuit and district of Massachusetts, wherein James Buffington, of Fall River, in said district, is plaintiff in error, and you are defendant in error, to show cause, if any there be, why judgment rendered against the said plaintiff in error, as in the said writ of error mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable Nathan Clifford, associate justice of the Supreme Court of the United States, this sixteenth day of September, in the year of our Lord one thousand eight hundred and seventy.

NATHAN CLIFFORD,
Associate Jus. Sup. Court of the U. S.

Due, sufficient, and legal service of this citation is hereby acknowledged.

JOSEPH M. DAY,
By DWIGHT FOSTER, *his Attorney.*

(Indorsement on cover:) No. 329. James Buffington, late collector of internal revenue, plaintiff in error, vs. Joseph M. Day. Massachusetts C. C. U. S.
Filed 5th December, 1870.

Supreme Court of the United States.

DECEMBER TERM, 1870.

JAMES BUFFINTON *v.* JOSEPH M. DAY.

BRIEF FOR THE PLAINTIFF IN ERROR.

SUPREME COURT OF THE UNITED STATES.

DECEMBER TERM, 1870.

JAMES BUFFINTON *v.* JOSEPH M. DAY.

BRIEF FOR THE PLAINTIFF IN ERROR.

By the Eighth Section of the First Article of the Constitution of the United States, it is provided, that "Congress shall have power to lay and collect taxes, duties, imposts, and excises, to pay the debts and provide for the common defence and general welfare of the United States; but all duties, imposts, and excises shall be uniform throughout the United States."

In pursuance of this provision of the Constitution, the statutes of the 30th of June, 1864, of the 3d of March, 1865, of the 13th of July, 1866, and of the 2d of March, 1867, were passed by the thirty-eighth and thirty-ninth Congresses.

Stat. 1864, c. 173, § 116; 13 Stat. 281:
Stat. 1865, c. 78, § 1; 13 Stat. 479:
Stat. 1866, c. 184, § 9; 14 Stat. 137:
Stat. 1867, c. 169, § 13; 14 Stat. 477.

These statutes enact that "there shall be levied, collected, and paid annually upon the gains, profits, and income of every person residing in the United States . . . whether derived from any kind of property, rents, interest, dividends, or salaries, or from any profession, trade, employment or vocation, carried on in the United States or

elsewhere, or from any other source whatever, a tax of five *per centum* on the amount so derived, over one thousand dollars."

Under these statutes the defendant in error was assessed upon his income, derived from his salary as judge of probate, paid him by the State of Massachusetts.

This tax he seeks to recover back in this action.

The question is, whether the United States government can lawfully impose a tax upon the income of an individual derived from a salary paid him by a State as a judicial officer of that State.

This question can be reached in two ways, — either by considering the *construction* of the statutes as the subject for decision, which is the position of the defendant in error, who claims that the Court should limit the application of the general terms quoted above, by excluding from their operation income derived from salaries paid by the States to their officers; or, by considering the *constitutionality* of those provisions of the statutes as the only matter in dispute, — the Court holding that their language is so clear as to raise no question of *construction*. This is the view taken of the case by the plaintiff in error: and it is submitted, that, even on the other view of the question, the real difference between the parties is on the constitutionality of a law taxing the income of a man derived from his salary as a State officer.

I.

The plaintiff in error maintains the constitutionality of the tax, on the general principle that, in the exercise of its *granted* powers, the federal government is supreme; that, under the general power of taxation, every man and every thing throughout the country (exports excepted) are subject to taxation in the discretion of Congress, *provided* that the power be exercised *for the purposes declared* in the Constitution, and not for *unauthorized* purposes, and that the *conditions* of its exercise, prescribed in the Constitution, uniformity, &c., be complied with.

1. This is certainly the plain meaning of the words of the Constitution. What was granted to the federal government was the power of taxation *for certain purposes*, — the common debts, the common defence, the general welfare, — for none of which were the particular States bound any longer to provide. These burdens were now thrown on the general government, and the resources on which each State had been able to draw to meet the requisitions of the Congress of the Confederation for money to defray these burdens, were naturally placed at the direct disposal of the United States. The idea was, not to exempt certain classes of persons or objects from their share of the public burdens; to exempt a judge of probate, for instance, from his share of the tax necessary to meet the interest on the public debt, or support the army and navy; but merely to lay these public duties on the general government instead of the States. With the duties went also the power to discharge them; the general government took by the Constitution an *exclusive* right to tax imports, and *shared* with the States the rights of taxation retained by them. Nobody was to be exempted, — nobody was to be taxed any more than he had been before. It was simply a change of the sovereign charged with the public duty, and who was therefore clothed with the power to discharge that duty. It involved, simply, that the citizen, whether holding an office under the State, or not, should pay to the United States those taxes necessary for the above-named purposes, which would otherwise have been paid to his State.

a. The soundness of the above views is recognized whenever the United States repays to a particular State money expended by that State for the public welfare, and originally raised by State taxation from the incomes of State officers among others. Nobody imagines that the State officers can claim their share of this tax from the State. Why should they not therefore pay it in the first instance to the United States?

b. Again: if the State officers are exempt from federal

taxation to the extent of their salaries, the effect of levying an income-tax would be to raise their salaries as compared with the other citizens of the State.

c. Besides: it is to be remarked, that in thus subjecting the incomes of State officers to federal taxation, there is no violation of the fundamental principle, that taxation and representation are to go together, as is the case where a State taxes the operations of the government of the United States.

See remarks of *Marshall*, C. J., in
McCulloch v. *Maryland*, 4 Wheat. 316, 435.

2. These views derive additional confirmation by a consideration of their application to other similar cases.

a. Take the banks, railroads, and other institutions of the States. Another section of the statute now under consideration, taxing the issues of State banks so excessively as to drive their notes out of circulation, has recently been held constitutional. It is true that the Court were divided on that case.

Veazie Bank v. *Fenno*, 8 Wallace, 533.

But the Court were unanimous in the opinion, that Congress can tax the *property* of the banks and of all other corporate bodies of a State, the same as that of individuals.

b. Again: it is not pretended that the income of an individual derived exclusively from State stock would be exempted from this income-tax. Yet the courts have recognized a strong analogy between the taxation of the *issues* of a bank, of the *office* of an officer, and of *stock as such:* is there not a similar analogy between *income* derived from the *business* of the bank, from the *dividends* of the stock, and from the *salary* of the office? If one is taxable, are not they all?

c. Again: who are to be thus exempted from bearing all direct share in the maintenance of the national government? Is the exemption to be confined to judges of State courts? or are not governors, mayors of cities, all officers of the state and municipal governments to be equally exempt? If not, why not?

d. Again: suppose the defendant in error had been drafted into the army under a general conscription law, would his office have saved him? If it would, how far is this exemption to extend? Are justices of the peace exempt? Are aldermen exempt? And is it to be supposed for a moment that the number of persons exempt in a particular State from military duty depends on the laws of that State? We are not speaking of a law drafting into the army all probate judges; that would be a law which the Court would probably consider as not aimed at legitimate purposes; but we are asking whether the fact of a man's holding a commission as a State judge exempts him from serving in the United States army in time of war.

3. From the above considerations, among others, the principle may reasonably be deduced that the United States government in the exercise of its granted powers can reach every man and every dollar in this country. The common defence and general welfare demand this: all the resources of each State were liable to the full for these purposes to each State before acceding to the Constitution; now they are all available, under the limitations of the Constitution, for the general government.

II.

We pass to a consideration of the objections to this view urged by the defendant in error.

1. It is urged that within the sphere of their jurisdiction, the States are as independent of the federal government, as the government, within its sphere, is independent of the States; and that a government whose officers are taxed cannot be considered independent.

But this independence of the States is confined to a certain sphere, by the terms of the objection. That is to say, it is an independence consistent with the supreme authority of another government over its citizens, and its property,

for certain of the most important purposes of government. Can that State, it may be pertinently urged, be in any sense independent, all of whose citizens may, against their will, be drafted into the army? Can that State be considered independent, all of whose citizens, except its officers (to adopt the defendant's theory for a moment), may be at any time deprived by another government of a percentage of their income to defray the expense of a war, for instance, to which they are all opposed? *In fine, is it any more an abridgment of the independence and sovereignty of a State to tax the agents of the people, than to tax the people themselves?*

The fact is, none of these abstract theories help us much. The people, acting through the States, have given to the general government certain duties to perform, and a general power of taxation to enable it to perform those duties. Whoever and whatever would have been liable for such taxation had the States been independent, and retained these charges in their own hands, were, it is safe to say, made liable for the same taxation from the new government. The sphere of the latter was limited by express provisions; by restricting the objects for which taxes could be levied; by defining the mode of levying them so as to insure uniformity throughout the country; by excluding exports from all liability to taxation; and in general, by conferring upon the general government *so few only* of the powers possessed by a nation. But when the general government acts within its prescribed limits and for its prescribed purposes, its power overrides every thing in the country, and there is no limit to its reach. It is of no avail to plead that a man is a State officer, or that his income was paid him by the State; if the government need him or his money for legitimate purposes, they can take both in the way pointed out by the Constitution; exactly as the government of his own State could have done had it retained the powers which it has expressly granted to the United States.

2. Do we then claim for the general government that it can tax the State governments out of existence? By no means: no more than it can tax the people out of existence. The United States taxes must be uniform; they can be levied only for certain definite objects; they must be conformed to the general principles and practice of taxation. Whatever injury they do to the State governments is purely an *incidental* injury: the taxes would have to be levied by the States themselves if they had not granted the power to do so to the United States: no more money is exacted of the citizen in one case than in the other: the power of the general government is only to be exercised for certain purposes, and then only under certain conditions. These provisions were thought adequate to guard against encroachment on the part of the federal government in the matter of taxation; and as long as the federal government levies its taxes with the *uniformity* required by the Constitution (and we are not now talking of any other taxes), there is and can be no danger to the State governments, for the excellent reason, *that the officer can be taxed no more than the citizen*, — the burden *falls on all alike*. It is true, that this tax can be indefinitely increased at the pleasure of Congress; but it is equally true, that whatever burden the people of the United States are willing to impose on themselves can be borne by the State officers in common with the rest of the people, without any injury to the State *governments*. In fact, this is no more than the States themselves would do if they had to provide for the same public burdens. And, as was pointed out before, if State officers were exempted, their salaries would be virtually raised; and it may be added, that, in that case the tax would not be "*uniform*."

3. The whole difficulty about this subject has arisen from the mistake of applying the language used by this Court, when the propriety of subjecting the powers and property of the United States to the varying taxation of the different States, was in question, to a case where the

United States proposes to impose its uniform taxes on the persons and property in all the States, over which and over whom it holds, by virtue of an express grant, a concurrent power of taxation with the States themselves.

It was decided that a State cannot tax the means used by the general government to execute its granted powers; because, in the first place, the Constitution expressly provided that in the exercise of these powers, the general government should be supreme; because, in the next place, exemption from State taxation was implied in the very grant itself; and also, because it would be practically impossible to carry out the powers granted to the general government, if their execution was to be hindered by the taxation which any State might see fit to impose on the means used to carry them out. So far as this question was concerned, it was as if the State of Massachusetts had granted these powers to a foreign government; had guaranteed that in the exercise of these powers the laws of that government should be supreme; and had then undertaken to tax the banks, stock, and the other means used to carry out these powers. The repugnance of the right of taxation claimed to the grant of power is manifest. And had the foreign government, in its turn, granted similar powers to the State of Massachusetts, and had then undertaken to tax the agents and means used by the State to carry out these powers, the same reasoning would exempt the officers and agencies of the State. But it is plain that this is not our case at all. There never was any grant of powers by the United States to the State of Massachusetts, — nor in the nature of the case could there be; consequently, there is no parallel whatsoever. The States reserved to themselves whatever rights of government they did not grant to the United States; they granted to the United States a concurrent right with themselves of taxation for certain objects: and if in the exercise of that right the United States taxes officers and private citizens alike, it does so by virtue of that grant of concurrent taxation.

To regard the authority of the federal government as endangered when the powers expressly granted to it for the common benefit are taxed by the different States, as if they were powers held subject to the authority of each State, is one thing: to discern danger to the independence of the States from the general government requiring State officers to pay their proportion of the public burdens, and taxing them in common with other people, in the uniform and regular exercise of its power to provide for the common defence and general welfare, — is quite another thing.

4. Again: all that we have contended for is the common liability of State officers for their *property*. But, suppose that Congress should impose a *license tax* on all State officers, — should require a man to pay $50, for instance, in order to discharge the duties of a judge of probate, or should require State treasurers to pay to the United States five per centum of all moneys in their hands, — the constitutionality of such enactments as these may well be doubted. It might be tested by the inquiry whether they were passed to carry out *the purposes* for which the right of taxation was given to Congress; whether, in fact, their purpose was not manifestly to injure the State governments. Moreover, the right of taxation we are contending for is simply that which would have been enjoyed by the State had it remained independent, — had it sustained the burdens and enjoyed the rights which it has granted and turned over to the federal government. Viewed by this test, we can see at a glance that such statutes as those imposing license taxes on State officers and collecting a percentage out of the money in the State treasury, as they would be preposterous in the extreme, as an exercise of the taxing power, if the whole subject were within the control of the State, are equally so now that the United States has succeeded to the State right of taxation for these objects. Such methods of taxation were never granted, and could not be held to be within the power of Congress. But taxation of the *incomes* of State officers

derived from their salaries *is exactly what the State does do;* therefore, the right to do the same for certain objects was granted to the United States under the general power of *concurrent* taxation.

5. But it is said, that the tax in question in this case is in reality a tax on the revenues of the State, which are withdrawn from the taxing power of Congress. But inasmuch as a tax in all respects similar is imposed on the State officers by the State itself, we have, if this proposition be true, the singular spectacle of a State taxing its own revenues. The same observation may be made regarding the operation of this very income tax on the salaries of United States officers. The truth is, that in no proper sense is a tax upon income derived from a salary paid by a State or by the United States a tax upon the State treasury, or upon that of the United States.

6. A similar consideration will, it is believed, dispel the force of the suggestion that this income-tax is a tax upon the State officers, as such. It is no more so than the like tax imposed by the State itself. The propriety of making all officers bear their proportion of the public burdens has commended this course alike to the States and the general government; but shall we say that the State taxes the *office* of a judge of probate? Or that the United States taxes the *office* of a major-general? Is it not clear, that when the salary has been paid, it belongs to the officer who receives it, and that he must contribute out of his substance as well to the support of the army and navy of his country as of the schools and poor-houses of his State? Is there any subjugation of State authority here?

III.

But if the Court should adopt the general theory of the defendant in error, that this case is controlled by the cases in which the right of the States to tax the agencies of the

federal government has been denied, we submit, that according to these cases the tax in question can be sustained.

1. The cases referred to are cases of attempted direct interference by the States with the means used by the general government to carry out its powers; the difference between them and the present case is striking, and material.

a. In the leading case of *McCulloch* v. *Maryland*, 4 Wheat. 316, the State of Maryland undertook to tax the *issues of notes* of a Bank of the United States. The Court *held* that this was a tax on the *means* used by the general government to execute one of their *powers*, and that the sovereignty of the State did not extend to those means. But the Court said that the *real estate* of the bank, and the *property of the citizens* of the State in the bank, which are subject to the sovereignty of the State, were liable to State taxation.

The same principles were re-affirmed in *Osborn* v. *United States Bank*, 9 Wheat. 251.

b. In *Weston* v. *Charleston*, 2 Pet. 449, the city of Charleston undertook to tax "*six and seven per cent. stock* of the United States." The Court said that this was a tax upon the *contract* subsisting between the United States and the individual, — a tax on the *power to borrow money* on the credit of the United States, which was not within the sovereignty of the State. Two justices, *Johnson* and *Thompson*, dissented, on the ground that, in their judgment, the tax was not a tax on the *contract*, but only an *income tax*, and, as such, constitutional.

In *Bank of Commerce* v. *N. Y. City*, 2 Black, 600, the Court decided, on the authority of *Weston* v. *Charleston*, that a State cannot tax United States stock constituting a part of the property of a bank.

The same principle was followed in the *Bank Tax Case*, 2 Wall. 200.

c. In the case of *Dobbins* v. *The Commissioners of Erie*

County, 16 Pet. 435, the agreed statement of facts stated that the plaintiff had been rated and assessed with county taxes "as an officer of the United States, *for his office, as such*, valued at $500." And the statute of Pennsylvania authorized an assessment upon "*all offices* and posts of profit." The Court *held* that the statute could not comprehend the *offices* of the United States. It is true, that much of the reasoning in the opinion of Mr. Justice *Wayne* would be pertinent had the statute merely subjected the plaintiff's income to a tax in common with other incomes: but the point decided was as above stated; and fell precisely within the principles laid down in *McCulloch* v. *Maryland*, and followed in *Weston* v. *Charleston;* namely, that a State cannot tax the *means* used by the government of the Union to execute its *powers*. The Court also *held* that no State could diminish by taxation the amount of the compensation paid by the United States to their officers; but that this principle could not serve also to exempt State officers from taxation by the United States, is more than intimated in the following sentence from the opinion of the Court: "The officers execute their offices for the public good. This implies their right of reaping from thence the recompense the services they may render may deserve; without that recompense being in any way lessened, except by the sovereign power from whom the officer derives his appointment, *or by another sovereign power to whom the first has delegated the right of taxation over all the objects of taxation in common with itself, for the benefit of both.*" This latter clause aptly describes the position taken by the plaintiff in error, in the case now under discussion.

2. If, now, we apply to the tax in question the test laid down by Chief Justice *Marshall* in *McCulloch* v. *Maryland*, — *if we measure the power of taxation by the extent of sovereignty*, — we find a distinct grant from the States to the United States, of sovereignty, and of the sovereign power of taxation over all the objects of taxation (except ex-

ports), — exclusive as regards imports, — concurrent with the States as regards every thing else. We find this defendant's income derived from his salary as judge of probate, regarded as a proper object of taxation by the State, and taxed as other property; the inference is unavoidable that it is equally taxable by the United States.

3. But if it be argued that the sovereignty of the States requires that the same exemptions should be made from the taxation of the United States, which have been made from the taxation of the States in favor of the means used by the general government to execute its sovereign powers, — we maintain, —

a. That it has never yet been held that a State cannot tax the income of an officer of the federal government, *as property*. The tax in the case of *Dobbins* v. *Commissioners*, was a tax on the *office;* and though the Court say, that the salary of an officer of the United States cannot be diminished by the taxation of a State, yet it must be remembered that the question was not presented in that form. That a State can tax the property — including the income derived from his salary — of an officer of the United States in common with the property of all other citizens of the State, and not making it a tax on the office, — has been thought legal by *Thompson*, J., in *Weston* v. *Charleston*, 2 Pet. 449, 483; and by the Supreme Judicial Court of Massachusetts in *Melcher* v. *Boston*, 9 Met. 73, 77.

b. But the conclusive answer to this argument is, that this Court has already decided otherwise in *Veazie Bank* v. *Fenno*, 8 Wall. 533. This was a case almost parallel to *McCulloch* v. *Maryland*, — when the question was, whether a tax of ten per cent. on the issues of a State bank was valid; and the Court held it was valid. It was there held that the United States could lawfully tax the operations of a State bank, even with the purpose of driving its issues of notes out of circulation.

But to this point it is not necessary for us to go in the case before us. All the Court were agreed that the prop-

erty of the banks and of all other incorporated institutions of the States could be taxed by the United States the same as that of individuals. That is to say, that property acquired under a grant from a State in the exercise of one of its sovereign powers, is subject to that uniform taxation which the federal government can impose upon all the property in the country. That property, paid to an individual as an officer of a State by a State in the exercise of its constitutional power to have such officers, is subject to the same taxation from the federal government, is all we contend for in this case. The statute under consideration imposes no tax on the office, — nor on the officer, as such, — nor on the money in the State treasury; the incumbent of the State office is viewed simply as a citizen of the United States, and, as such, liable to pay a proportion of his property, however acquired, to the government of the United States. His property, as well as that of every other citizen throughout the country, is subject to be taxed by the federal government for the common defence and the general welfare of the whole country.

JOHN C. ROPES,

Assistant Attorney of the United States for the District of Massachusetts, Attorney for the Plaintiff in Error.

A. G. Akerman
Atty Genl

Circuit Court of the United States.

MASSACHUSETTS DISTRICT.

MAY TERM, 1870.

JOSEPH M. DAY,

VS.

JAMES BUFFINTON.

BOSTON:
ALFRED MUDGE & SON, LAW PRINTERS, 34 SCHOOL STREET.
1870.

CIRCUIT COURT OF THE UNITED STATES.

DISTRICT OF MASSACHUSETTS.

MAY TERM, 1870.

JOSEPH M. DAY *v.* JAMES BUFFINTON.

THIS was an action of contract to recover the amount of taxes assessed under the Internal Revenue laws of the United States, upon the plaintiff's salary as Judge of Probate and Insolvency for the County of Barnstable, in the Commonwealth of Massachusetts.

It was argued before Clifford and Lowell, J. J., at the October term, 1869, upon the following agreed facts: "That the plaintiff was, during the years eighteen hundred and sixty-six and eighteen hundred and sixty-seven, a judicial officer of said Commonwealth, to wit, a Judge of the Court of Probate and Insolvency for said County of Barnstable, which said Court is a Court of record. That the defendant was, in the year eighteen hundred and sixty-seven, the United States Collector of Internal Revenue for the First Congressional District in said Commonwealth, and that said County of Barnstable is within said First Congressional District. That in said years eighteen hundred and sixty-six and eighteen hundred and sixty-seven, the United States Assessor of Internal Revenue for said First Congressional District, against the written protests of the plaintiff, made before assessment, assessed upon his salary as Judge, as aforesaid, taxes amounting in all to sixty-one and fifty one-hundredths dollars. That against the written protests of the plaintiff, before collection thereof, delivered to the defendant, the defendant collected said taxes of the plaintiff. That the plaintiff's salary as Judge, as aforesaid, is fixed by law, and is payable out of the Treasury of said Commonwealth, and that the plaintiff has in all respects complied with the provisions of the Revenue laws of the United States prescribing the conditions under which actions may be brought for the recovery of taxes illegally assessed under said laws."

DWIGHT FOSTER, for the Plaintiff.

The question before the Court is whether the salary of a Judge of a Court of Record, payable out of the Treasury of the State of Massachusetts, is legally taxable as income under the Internal Revenue laws of the United States.

"The powers of the General Government and of the State, although both exist and are exercised within the same territorial limits, are yet separate and distinct sovereignties acting separately and independently of each other within their respective spheres." *Ableman* v. *Booth*, 21 Howard, 516. The sphere of action appropriated to each is as far beyond the reach of the other, "as if the line of division was traced by landmarks and monuments visible to the eye." . . . . "Each is sovereign and independent in its sphere of action, and exempt from the interference or control of the other either in the means employed or functions exercised." *Bank of Commerce* v. *New York City*, 2 Black. 635. "The people of each State compose a state having its own government and endowed with all the functions essential to separate and independent existence. In many articles of the constitution the necessary existence of the States, and, within their proper spheres, the independent authority of the States is distinctly recognized." Chase C. J. *Lake Co.* v. *Oregon*, 7 Wallace, 76. "That the power to tax involves the power to destroy; that the power to destroy may defeat and render useless the power to create; that there is a plain repugnance in conferring on one government a power to control the constitutional measures of another . . . . are propositions not to be denied." *McCullough* v. *Maryland*, 4 Wheaton, 430. "The right of taxation when it exists is necessarily unlimited in its nature. It carries with it inherently the power to embarrass and destroy." Swayne, J., *Austin* v. *Boston*, 7 Wallace, 699.

The precise converse of the question now under discussion was decided in *Dobbin* v. *Commissioners of Erie Co.*, 16 Peters, 435. There, under a law of the State of Pennsylvania, a tax was imposed on "the emoluments of the office" of the Captain of a United States Revenue Cutter. It was said by the Court to be "levied on a valuation of the income of the office." p. 445. And it was held that this could not be done constitutionally.

The general principles relied upon in the present cause are affirmed in an unbroken series of adjudications commencing half a century ago,

with *McCulloch* v. *Maryland*, 4 Wheaton, 316, and coming down to *Society for Savings* v. *Coit*, 6 Wallace, 594, and other cases in the same volume in which the opinions of the Court were delivered by Mr. Justice Clifford: see also *Weston* v. *Charleston*, 2 Peters, 449. *Bank Tax Cases*, 2 Wallace, 200; *Van Allen* v. *Assessors*, 3 Wallace, 573. It is clearly established by *Weston* v. *Charleston*, and *Dobbin* v. *Commissioners of Erie Co.*, that no valid distinction can be drawn between the taxation of an office itself *eo nomine* and the taxation in a general assessment upon incomes of the salary or emoluments of an office; which are the legal compensation for the performance of official duties, and are presumed to be only such adequate remuneration as is requisite to secure the services of a competent incumbent. In each case it is held to be a fatal objection to the power to lay such a tax; that if admitted to exist at all there can be no limit to the extent to which the imposition may be carried. The office taxed exists only at the mercy of the taxing power. In the cases heretofore decided by the Supreme Court of the United States, the taxes adjudged invalid have been imposed by State Legislation upon instrumentalities of the Federal Government, and there has existed an additional obstacle in the fact that the Federal Government is declared by the Constitution to be supreme within its sphere of action. But this has been adverted to and relied upon by the Court only as a cumulative argument, and by no means as the principal or essential foundation of the decisions which have been made.

The right of the State to exist as a body politic, to have a government with Executive, Legislative and Judicial departments, to have state offices filled and their duties performed, does not depend upon the will or forbearance of Congress. But if state offices or their emoluments are taxable at all by the Federal Government, that taxation may be carried to the point of destruction. To admit the principle, is to admit the power of Congress to tax every State Government out of existence.

The Act of Congress (July 1, 1862, 12 U. S. Stat. p. 483) which required stamps to be affixed to writs and other original processes in Courts of Record was held by the highest tribunals of several States to be unconstitutional in its application to State Courts. *Warren* v. *Paul*, 22 Indiana, 276. *Union Bank* v. *Hill*, 3 Caldwell (Tenn.), 325. *Jones* v. *Keep*, 19 Wisconsin, 369. *Fifield* v. *Close*, 15 Michigan, 505. And this provision was repealed by Congress soon after these decisions

were published. It is believed that the reasoning of these respectable authorities, will be found to be fully applicable to the case at bar. See also *Carpenter* v. *Snelling*, 97 Mass. 452.

In the case at bar, there is no attempt to impugn the constitutionality of an act of Congress. We are dealing only with a question of construction. The Court is merely called upon to limit the application of general language by excluding from its operation a description of Income which there is no reason to believe that Congress intended to embrace. The Internal Revenue laws do not in terms impose any tax on state offices, or their emoluments, or the income derived therefrom, and considering the well-settled and universally known principles of constitutional law on this subject, it is fair to conclude that if such an intention had existed it would have been expressed in special and explicit provisions of the Act. *United States* v. *Coombs*, 12 Peters, 72. "General terms should be so limited in their application as not to lead to injustice, oppression, or an absurd consequence. It will always therefore be presumed that the legislature intended exceptions to its language, which would avoid results of this character." Field, J. *United States* v. *Kirby*, 7 Wallace, 486.

JOHN C. ROPES, for the Defendant.

By the Eighth Section of the First Article of the Constitution of the United States, it is provided, that "Congress shall have power to lay and collect taxes, duties, imposts, and excises, to pay the debts and provide for the common defence and general welfare of the United States; but all duties, imposts, and excises shall be uniform throughout the United States." In pursuance of this provision of the Constitution, the statutes of the 30th of June, 1864, of the 3d of March, 1865, and of the 2d of March, 1867, were passed by the Thirty-Eighth and Thirty-Ninth Congresses. 13 Statutes at Large, 281 (§ 116), 479 (§ 1), 14 ib. 137 (§ 9), 477 (§ 13). These Statutes impose a tax of five *per centum* on the gains, profits, and income of every person residing in the United States, derived from any source whatever. Under these statutes the plaintiff was assessed upon his salary, as Judge of Probate, paid him by the State of Massachusetts. This tax he seeks to recover back in this action.

The question is, whether the United States government can lawfully impose a tax upon a salary paid by a State to an officer of that State.

I. It is obvious, in the first place, that the Constitution and the Statutes make out a *primâ facie* case for the government. The only limitation imposed *in terms* by the Constitution on the general power of taxation, is, that the taxes shall be uniform throughout the country. That this limitation has been duly observed in laying the tax in question is not denied.

II. But it is urged that there is an *implied* limitation to the power of taxation granted by the Constitution, namely, that it shall not be exercised as to destroy or even impair the (so-called) sovereignty of the States, or in any way injuriously to affect the State governments; and further, that this tax, if assessed upon State officials, is in direct conflict with this limitation, and is therefore unconstitutional.

1. We deny that there is any such implied limitation.

(*a.*) There is no *necessary* implication of this nature growing out of the relations of the States to the Federal Government. The same people that through the Federal government, lay the tax in question, establish, in the different States, the officers and the institutions upon the income and gains of which the tax is assessed. The tax thus imposed by the people of all the States, acting through their Representatives in Congress, is uniform throughout all the States. Taxation and representation go together. There is an implied limitation on the power of a State to tax, however, in that a State cannot tax the institutions and officers of the Federal government. Here there is necessarily to be implied a restriction on the power of the States, for such taxes are not uniform or equal throughout the country; nor are they imposed by the same power which creates the offices and institutions taxed; and they render it possible for one State to hinder and obstruct the workings of the superior and independent sovereignty of the United States. *McCulloch* v. *Maryland*, 4 Wheaton, 316. Osborn v. *United States Bank*, 9 do. 251. *Weston* v. *Charleston*, 2 Peters, 449. *Dobbins* v. *Supervisors of Erie Co.* 16 do. 435. Story on the Constitution, § 1053. Cooley's Constitutional Limitations, 479–481. *Bank of Commerce* v. *New York City*, 2 Black, 620. 1 Kent's Commentaries, 425–429. Bank Tax Case, 2 Wallace, 200.

The claim, that the banks, offices of trust and profit, bonds, etc., of the State governments, are, by the converse application of the principles laid down in the cases cited above, exempted from taxation by the

United States government, is not tenable. The result would be to exempt from federal taxation an enormous amount of property; for not only would State bonds be exempt, but also all railroad and other bonds guaranteed by States, all bonds of municipal corporations, — the creatures of the State governments, — and, in fact, it is difficult to say where the line could be drawn. The power of taxation granted by the Constitution to the General government, would in great measure be rendered nugatory. See remarks of *Redfield*, C. J., in 4 Am. Law Register, N. S. 159, 165.

To support this enormous claim of exemption from national taxes, it is urged, that "the States are to exist with independent powers and institutions within their spheres," just as "the Federal government is to exist with independent powers and institutions within its sphere"; and that, consequently, the Federal government cannot tax the agencies and instruments used by the States to carry on government within their own proper spheres.

See remarks of *Marshall*, C. J., in *McCulloch* v. *Maryland*, 4 Wheat. 429, 436. *Warren* v. *Paul*, 22 Indiana, 279. *Berney* v. *Tax Collector*, 2 Bailey, So. Car., 654. See also *Bank of Commerce* v. *Commissioners of Taxes*, etc., 23 N. Y. 102, reversed in 2 Black, 620. *Fifield* v. *Close*, 15 Michigan, 509. But this is mere theory, not law. The real and only subject for inquiry in such cases is, not whether the person or thing affected is part and parcel of the machinery of a State Government, but whether the Federal government is acting under one of its *enumerated* (or *necessarily implied*) powers. Thus, if a State bank or railroad is taxed, the question is, not whether these institutions are part of the fiscal machinery of the State, but whether the Constitution gives to the Federal government the power of taxation. So, if the United States take, for instance, a State Jail under the right of Eminent Domain, the question is, not whether the property taken is part of the apparatus of the State for the prevention of crime, but whether the right of Eminent Domain belongs to the Federal government. This is the only rule absolutely free from embarrassment in its application, and the only rule proper to be observed in investigating the extent of the *sovereign* powers granted to the General Government. If the act done is within the scope of one of these *sovereign* powers, there is *in law*, and can be, no limitation in its exercise. The extent to which it shall be exercised rests entirely in the discretion of Congress.

If the foregoing views are sound, all the persons in the United States, whoever they may be; all the property in the United States, to whomsoever it may belong and however acquired; all the offices and all the officers of the State Governments; all the State banks and all the State securities, are subject absolutely to the discretion of Congress in the exercise of the general power of taxation vested in the Federal government. See *Woodson* v. *Randolph*, 1 Virg. Cases, 128; *Howell* v. *Maryland*, 3 Gill. 14. Opinion of *Downer*, J., in *Jones* v. *Keep*, 19 Wisconsin, 369, 381, besides the cases before cited.

(*b.*) No implied restriction on the power of the government arises in law from the fact that the power of taxation granted by the Constitution to the Federal government may be so wielded as to injure or even destroy the State government.

Such risks are always taken when a general government is established; as, for instance, when the people of Massachusetts, inhabitants of towns and cities, established, in 1780, a State Government, with powers similarly liable to effect, by their abuse, the virtual destruction of municipal government. See remarks of *Marshall*, C. J., in *McCulloch* v. *Maryland*, 4 Wheaton, 428; and in *Providence Bank* v. *Billings*, 4 Peters, 515, 562, 563. The only safety against the abuse of this power to the injury of the State governments is in the discretion of Congress, and especially, in the fact that the people of the States and the people of the United States are one and the same people. There is no more danger of the abuse of the power of taxation by the General Government, than of the abuse of the other great powers given to it, such as the power to raise and maintain armies, to call out the militia, to make treaties; or even the implied right of eminent domain. The discretionary power in any government must be vested somewhere. In our government, it is vested in the United States. Constitution, Article VI.

2. But if the Court shall be of opinion, that there is such a limitation to the taxing power of the Federal government, as that it shall not be exercised so as to destroy or even impair the (so-called) sovereignty of the States, or in any way injuriously to affect the State governments, then we deny that the tax in question in this suit conflicts with that limitation either theoretically or practically.

(*a.*) The tax in question is a general income tax, affecting the income

of Probate Judges only incidentally, and not aimed at the office. Even supposing that State *offices* and *officers* should be held exempted from federal taxation by a converse application of the principles laid down in *Dobbins* v. *Commissioners*, etc., 16 Peters, 435, yet that does not settle this case. It has never been decided, that a State may not lawfully tax the *income* of an officer of the general government. Such a tax has been considered legal by *Thompson*, J., in *Weston* v. *Charleston*, 2 Pet. 449, 483; and by *Dewey*, J., in *Melcher* v. *Boston*, 9 Met. 77. See also the opinion of the Court of Appeals of New York in *Bank of Commerce* v. *Commissioners*, 23 N. Y. 192; and the arguments of counsel and opinions in *Berney* v. *Tax Collector*, 2 Bailey, So. Car. 654. We claim, then, that *theoretically*, the tax in question does not conflict with the exercise by a State of all its lawful powers.

(*b.*) But *practically* the case presents no difficulty whatever. The incomes of all United States officers, except the President and the Judges of the Supreme Court, are taxed to the same extent as are the incomes of all State officers. It is impossible for the Court to say that such a tax, so uniform and so indiscriminate, is, in any intelligible and legal sense, calculated to impair the exercise of the constitutional powers of the States.

FOSTER, in reply.

Two propositions are undeniable: first, that, within the sphere of their jurisdiction, the States are just as independent of the Federal government, as the government, within its sphere, is independent of the States.

Second, that a government, the processes and instrumentalities of which are liable to taxation by another sovereignty, cannot be in any sense independent of it.

These two propositions cover the present case. The defendant's argument has the merit of not flinching from its logical consequences.

It in effect concedes that when one government has the power to tax another, the one liable to be taxed must necessarily be subject and subordinate to the one which has the power to tax. According to his theory we do not live under a complex system of State and Federal governments each independent within its sphere, but the continued existence of the States depends on the moderation and forbearance of the United States, in the exercise of its taxing powers. This cannot be.

The opinion of the Court was read at the May Term, 1870.
CLIFFORD, J.

Taxes were assessed against the plaintiff under the internal revenue laws of the United States upon his salary as judge of Probate and Insolvency for the county of Barnstable in this State for the years 1866 and 1867, and having paid the same under protest, he brought an action of assumpsit against the defendant as the collector of such taxes for the first collection district to recover back the amount so paid. Both assessments amounted to the sum of sixty-one dollars and fifty cents, and the agreed statement shows that the salary of the plaintiff as such judge is fixed by law, and that it is payable out of the treasury of the State, and that he made due protest before the taxes were assessed and at the time he made the payments. Five per centum on the excess over six hundred dollars and not exceeding five thousand dollars was required to be levied, collected and paid annually by the act of the thirtieth of June, 1864, as amended by the act of the third of March, 1865, upon the annual gains, profits and income of every person residing in the United States . . . . whether derived from any kind of property, rents, interests, dividends or salaries, or from any profession, trade, employment or vocation . . . . or from any other source whatever. 13 Stat. at Large 281, sec. 116, as amended, 13 Ibid. 479, sec. 1. First assessment was made under that provision and the second was made under a provision in all respects similar except that the exemption was one thousand dollars instead of six hundred as in the former act. 14 Stat. at Large, 477, sec. 13. Power to lay and collect taxes, duties, imposts and excises to pay the debts and provide for the common defence and general welfare of the United States is conferred by the constitution, and the only limitation annexed in terms to that clause of the instrument is that all duties, imposts and excises shall be uniform throughout the United States. But the powers granted to Congress are not in all cases exclusive of similar powers existing in the States, unless where the constitution has so provided, or the exercise of a like power is prohibited to the States, or there would be a direct or necessarily implied repugnancy in the exercise of it by the States. Exclusive authority over all places purchased by the consent of the legislature of the State, in which the same shall be, for the erection of forts, magazines, dockyards and other needful buildings, is delegated to Congress, and it follows as a necessary consequence

that the State legislatures cannot exercise any power or jurisdiction over such places as the exclusive authority over them is vested in the national government. State authorities cannot coin money, emit bills of credit or make anything but gold and silver a tender in payment of debts as they are prohibited from so doing by the constitution, nor shall any State without the consent of the Congress lay any imposts or duties on imports or exports except what may be absolutely necessary for executing its inspection laws. Con., Art I., Sec. 10. Laws establishing rules of naturalization are required to be uniform, and it is held that the power to pass such laws is vested exclusively in Congress, as the exercise of such a power by the States would be incompatible with that condition as annexed to the exercise of that power. *Houston* v. *Moore*, 5 Wheat. 23. *Chirac* v. *Chirac*, 2 Wheat. 254.

Cases arise where it is held that the mere grant of power to Congress, unaccompanied by any legislation under the grant, does not imply a prohibition on the States to exercise the same power. Such cases, however, are not numerous, and whenever the nature of the power granted or the terms in which the grant is made are of a character to show that the framers of the constitution intended that it should be exclusively exercised by Congress, the subject is as completely taken from the State legislatures as if the constitution contained an express prohibition to that effect. *Sturgis* v. *Crowninshield*, 4 Wheat. 122. *Ogden* v. *Saunders*, 12 Wheat. 213. Undoubtedly the power of Congress to lay and collect taxes, duties, imposts and excises is coextensive with the territory of the United States, but when properly construed it does not interfere with the power of the States to levy taxes for the support of their own governments, nor is the exercise of that power by the States an exercise of any portion of the power that is granted to the federal government. *Loughboro* v. *Blake*, 5 Wheat. 317. *Gibbons* v. *Ogden*, 9 Wheat. 1. *Waring* v. *The Mayor*, 8 Wall. 121. State power to lay and collect taxes, for the support of their government, may reach every subject over which the sovereign power of the States extends. They cannot tax imports nor exports without the consent of Congress, as they are prohibited from so doing by the constitution. Want of authority in the States to tax the securities of the United States issued in the exercise of the admitted power of Congress to borrow money on the credit of the United States is equally certain, although there is no prohibition in the constitution es-

tablishing any such rule. *Hamilton Co.* v. *Massachusetts*, 6 Wall. 639. *Society for Savings* v. *Coit*, 6 Wall.

All subjects over which the sovereign power of a State extends are as a general rule proper objects of taxation, but the power of a State of the Union to lay taxes does not extend to the instruments of the national government, nor to the constitutional means employed by Congress to carry into execution the powers conferred in the federal constitution. Tax laws of the States cannot restrain the action of the national government, nor can they abridge the operation of any law which Congress may constitutionally pass. They may extend to every object of value within the sovereignty of the State belonging to the citizens, but they cannot reach the instruments and means of the federal government nor the administration of justice in the federal courts, nor the collection of the public revenues, nor interfere with any constitutional regulation enacted by Congress. *McCulloch* v. *Maryland*, 4 Wheat. 429. *Brown* v. *Maryland*, 12 Wheat. 448.

Power to tax its citizens or subjects in some form is an attribute of every government, residing in it as part of itself, and hence it follows that the power to tax may be exercised at the same time upon the same objects of private property by the State and by the United States without inconsistency or repugnancy. *Society for Savings* v. *Coit*, 6 Wall. 606. *Prov. Bank* v. *Billings et al.* 4 Pet. 563. Such power exists in the State as one conferred or not prohibited by the State constitution, and in the federal government under an express grant. Such powers are therefore perfectly consistent, though the two governments, in exercising the same, act entirely independent of each other, as applied to the property of the citizens.

Congress in its discretion fixes by law the compensation to be allowed to federal officers; and having exercised that discretion, and fixed the amount of compensation, the law of Congress confers upon the officer the right to receive that amount when he has performed the duties devolved upon the office; and the settled rule of decision in the Supreme Court is that any law of a State imposing a tax upon such an office diminishing the recompense allowed to such officer is in conflict with the law of Congress which defines and secures to the officer the prescribed compensation. *Dobbins* v. *Commissioners*, 16 Pet. 447. Taxation by the States of the kind mentioned is declared to be unconstitutional, because the

exercise of such a power is an appropriation of the revenue, levied and collected to pay the debts and provide for the common defence and general welfare of the United States, to the support of the State Government, and because the levying and collection of such taxes constitute a direct interference with the means provided by Congress to carry into effect every power granted in the Constitution. Prior to the date of that decision the Supreme Court had decided that the States could not tax the public securities without the consent of Congress, nor levy any tax upon imports, and the court was equally unanimous and decisive in opinion that a State law imposing a tax upon the salary of a federal officer was unconstitutional and void. *McCulloch* v. *Maryland*, 4 Wheat. 429. *Weston* v. *Charleston*, 2 Pet. 449. *Osborn* v. *U. S. Bank*, 9 Wheat. 738. Argument for the plaintiff is that the converse of the proposition is equally true that a law of Congress taxing the salary of a State officer is equally unauthorized as an appropriation of the revenue raised by the legislature to defray the necessary expenses of the State, and that it is equally unwarranted as an unauthorized interference with the operations of the State governments. Perfect concurrence in the rule exempting the salary of the federal officer from taxation by the States is expressed by the defendant, but he denies that the converse of that proposition has any foundation whatever. Federal officers and the instruments and means of the federal government it is conceded are exempt from state taxation, but it is denied that the federal government is subject to any such implied prohibition, even in the case before the court, because the tax in question it is argued is imposed by the same people who established the offices and institutions in the States which are subjected to the burden of the controverted tax. Suppose the tax in question is imposed in the constitutional sense by the same power as that which created the offices and institutions subjected to the payment of the same, still it is not perceived that the concession advances the argument, unless it be assumed that the offices and institutions subjected to the burden imposed are under the control of the power imposing the tax, which is the precise question in controversy between the parties. Disguised as it may be, the theory of the defendant is that the law imposing the tax is a valid tax, because Congress in enacting the law imposing it exercised a paramount power over the revenues of the State raised and appropriated for the purposes declared in the agreed statement. Ex-

pressed as it may be, the proposition of the defendant is in substance and effect that the States cannot tax the instruments and means of the government of the United States because the Federal Government is supreme, but that the latter may tax the instruments and means of the State governments, because, as he assumes, the States are subordinate to the United States in the same unqualified sense as the counties of a State are to the paramount authority by which they were created. Unquestionably the constitution and the laws of the United States made in pursuance thereof, and all treaties made under the authority of the United States are the supreme law of the land, because it is so ordained in the constitution, but the same instrument also provides that the powers not delegated to the United States *by the constitution*, nor prohibited by it to the States, are reserved to the States respectively or to the people, and it is an obvious rule of construction that these two provisions must be considered together in determining the question under consideration, as they are important provisions in the same instrument, and cannot be regarded as in any respect repugnant to each other.

Counties and other municipal corporations were created by the States; but the States were not created by the United States, as the States existed as independent sovereignties before even the union was formed, and they continued to be such from the date of the declaration of independence until the articles of confederation were ratified; and even then it was provided in the second article that "each State retains its sovereignty, freedom and independence, and every power, jurisdiction and right which is not by the confederation expressly delegated to the United States in Congress assembled." Few in number and restricted in operation as the powers granted to the United States in the articles of confederation were, still they were sufficient with the coöperation of the several States to carry the country through the war of the revolution, and to enable the patriots of that day to lay the foundations of our public liberty and national independence. Though the powers granted were sufficient for the time, still when peace came they were soon found to be wholly inadequate to the exigencies of the new goverment in the relations which it sustained to the several States. Such powers as the confederation possessed operated only upon the States as corporations and not upon the people of the States; and the system of government as adopted made no provision for an executive of any kind, nor for a judiciary ex-

cept in certain matters of prize, and for the trial of piracies and felonies committed upon the high seas. Radical defects existed also in the principles of the system, as the Congress could not lay and collect taxes for the support of the government, nor was it vested with any power to compel the States to contribute to the common treasury their just proportions of the amount necessary to defray the expenses incurred for the common defence and general welfare. Difficulties and defects of the kind, too numerous to mention in this investigation, led to the formation and adoption of the present constitution, which, as recited in the preamble, was ordained and established, "in order to form a more perfect union, establish justice, insure domestic tranquillity, provide for the common defence, promote the general welfare, and secure the blessings of liberty to ourselves and our posterity." Perpetuity was as much the object which the framers of the instrument had in view as any other of the high purposes therein described, as their declared aim was to secure the blessings of liberty to their posterity as well as to themselves and their constituents. They did not attempt to amend the old system, but they ordained a new one, vesting the powers of government in three separate departments, to wit, the legislative, the executive, and the judicial, and providing that the powers granted should operate not merely upon the States as under the confederation, but upon the whole people, and investing the new government with most ample powers to enforce the prohibitions of the constitution, and the laws passed by Congress in pursuance of its provisions. Evidence to show that the union of the states as perfected in the constitution was intended to be indissoluble pervades every part of the instrument, as is sufficiently shown from the extent of the powers granted, and the amplitude of the means provided to carry them into effect. Congress may legislate for all the purposes specified in the express grants conferring such powers, and may pass all laws necessary and proper "for carrying into execution the foregoing powers, and all other powers vested by the constitution in the government of the United States, or in any department or officer thereof." Provision is also made that the President shall take care that the laws be faithfully executed, and that the judicial power shall extend to all cases in law and equity, arising under the constitution, the laws of the United States, and treaties made or which shall be made under their authority. Intended perpetuity of the [illegible] in every one of

these provisions, to which it would seem that nothing need be added to show that the doctrine of secession is a wicked heresy, but if more be needed it is found in the fourth section of the fourth article of the constitution, which provides that the United States shall guarantee to every State in this Union a republican form of government, and shall protect each of them against invasion and . . . domestic violence. None of these views, however, as to the nature and objects of the federal constitution or the permanent and indissoluble character of the new government are controverted by either party in this case, and for that reason they need not be further considered at the present time. Conceded as they are, they may be assumed as truths which cannot be contested; but it does not follow that the government ordained by the constitution is a government of unlimited powers. On the contrary, the settled construction is that the government of the United States is one of limited powers, which is shown to a demonstration by the tenth amendment, which reserves to the States respectively or to the people all power not delegated to the United States by the constitution, nor prohibited by it to the States. *McCulloch* v. *Maryland*, 4 Wheat. 421. *Hepburn* v. *Griswold*, 8 Wall. 614. 2 Story on Con. 142.

Power to lay and collect taxes was possessed by the States even before the Union was formed, and many years before the constitution was ordained. Massachusetts adopted her constitution in 1780, and the same with certain alterations and additions is still in full force. Authority was therein given, and in that respect it is unchanged, empowering the legislature "to impose and levy proportional and reasonable assessments, rates and taxes upon all the inhabitants of, and persons resident and estates lying within the said commonwealth, and also to impose and levy reasonable duties and excises upon any produce, goods, wares, merchandise, and commodities whatsoever brought into, produced, manufactured or being within the same." *Provident Institution* v. *Massachusetts*, 6 Wall. 623.

Since the constitution was adopted, the States cannot lay any imposts or duties on imports or exports except what may be absolutely necessary for executing their inspection laws, not because Congress may lay and collect taxes, duties, imposts and excises, but because the constitution expressly provides that no State shall exercise that power without the consent of Congress. Art. I. sec. 10. Want of authority in the

States to tax the securities of the United States, issued in the exercise of the admitted power of Congress to borrow money on the credit of the United States is equally certain, although there is no express prohibition in the constitution to that effect. Outside of those restrictions, however, the power of the States to tax, extends to all objects except the instruments and means of the Federal Government within the sovereign power of the State. *Hamilton Co.* v. *Massachusetts*, 6 Wall. 639. Taxes are defined to be burdens or charges imposed by the legislative power upon persons or property to raise money for public purposes, or, as another text writer defines the word, a tax is a contribution imposed by the government for the service of the State. Cooley on Con. 479. Blackwell on Tax Titles, 1. Moneys derived from State taxes are as much designed for public purposes or for the service of the State, as moneys raised under the law of Congress, and are just as essential to the support and maintenance of our complicated system of government, as it is an obvious truth that no constitutional government can long continue to exist without that power, or if despoiled of the avails which accrue from its exercise. Officers, legislative, executive and judicial, are as essential to the existence of the State governments as they are in conducting the affairs of the United States, and it is just as necessary that they should be compensated at the public expense. Comparatively few limitations can safely be annexed to the power of taxation, as the exercise of the power is essential to the very existence of government, and the extent of the demand for its exercise cannot be foreseen, but there is a plain repugnance in conferring upon one government a power to tax the revenues of another in a system of government like that existing in our country, where the constitution of each of the two governments recognizes the other as a part of the system, and where each rests upon the admitted principle that both are to be perpetual.

Influenced by these considerations, our conclusion is that the established rule which prohibits the States from taxing the instruments and means of the federal government also withdraws the revenues of the State from the taxing power conferred by the constitution of the United States. Power to tax for State purposes is as much an exclusive power in the States as the power to lay and collect taxes to pay the debts and provide for the common defence and general welfare of the United States is an exclusive power in Congress. Both are subject to certain

prohibitions and restrictions, but in all other respects they are supreme powers possessed by each government entirely independent of the other. *Fifield* v. *Close*, 15 Mich. 505. *Warren* v. *Paul*, 22 Ind. 279. *Jones* v. *Keep*, 19 Wis. 369. *Union Bank* v. *Hill*, 3 Cold. (Tenn.) 325.

Most of the powers conferred upon the government of the United States are exclusive, and it is unquestionably true that the national government in the exercise of those powers is supreme, but it is equally true that powers not delegated to the United States by the constitution nor prohibited by it to the States are reserved to the States respectively or to the people, and it follows that the States in the exercise of such powers as are not delegated to the United States and are reserved to them are also supreme. Exclusive powers possessed by the United States cannot be exercised by the States, nor can the exclusive powers possessed by the States be exercised by the federal government. They are in those respects, though exercising jurisdiction within the same territorial limits, "separate and distinct sovereignties acting separately and independently of each other within their respective spheres" just as fully "as if the line of division was traced by landmarks and monuments visible to the eye." *Ableman* v. *Booth*, 21 How. 516. *McCulloch* v. *Maryland*, 4 Wheat. 429. *Austin* v. *The Aldermen*, 7 Wall. 699.

Pursuant to the constitution, Congress may lay and collect taxes, duties, imposts and excises to pay the debts and provide for the common defence and general welfare of the United States; and the States, subject to the prohibitions of the constitution, express and implied, may lay and collect taxes and excises for the support of their respective State governments, and each in that behalf is sovereign and independent in its sphere of action, and exempt from the interference or control of the other, either in the means employed or functions exercised. Unless it be so, then the States have only a permissive existence, as it is conceded that the power to tax involves the power to destroy, and that the power to destroy may defeat and render useless the power to create. *McCulloch* v. *Maryland*, 4 Wheat. 431. Grant that the theory of the defendant is correct, and complete subjugation of all State authority must necessarily follow; as Congress, if they may tax one State office, may tax every other office known to the constitution and laws of a State. They may tax the salary of the governor, and the travel and *per diem* of the members of the legislature, as well as the salaries of the

judges of the State courts. Revenue may be collected by the States; but, if the views of the defendant are correct, it may be absorbed by the taxing power of Congress as fast as it is paid into the treasury of the State, and the State may be left as destitute of means to defray its current expenses as if the power to lay and collect taxes and excises did not exist. *Bank Tax cases*, 2 Wall. 200. *Van Allen* v. *The Assessors*, 3 Wall. 573.

Suggestion is made that the theory assumed by the plaintiff, if sustained by the Court, will exempt a large amount of property from federal taxation; but the decisive answer to that suggestion at the present time, is that the decision of the Court is confined to the case presented in the agreed statement. Such a tax, in our opinion, is as indefensible in principle, as if levied upon the office held by the plaintiff, or directly upon the revenues of the State before they are paid out of the State treasury, as the tax levied and collected operates to that extent as a reduction of the compensation allowed to the officer, — the effect of which is to require a corresponding addition to his salary. Public officers cannot and ought not to be expected to perform official services without reasonable compensation; and if not, then it is clear that the effect of such a tax is the same as it would be if levied upon the office instead of the officer, or the salary annexed to the office. According to the agreement of the parties, judgment must be entered for the plaintiff in the sum of sixty-one dollars and fifty cents.

Supreme Court of the United States.

DECEMBER TERM, 1870.

JAMES BUFFINGTON, PLAINTIFF IN ERROR,

vs.

JOSEPH M. DAY.

BRIEF OF MR. FOSTER, of Counsel for the Defendant in error.

Supreme Court of the United States.

DECEMBER TERM, 1874.

JAMES BUFFINTON, PLAINTIFF IN ERROR,

vs.

JOSEPH M. DAY, DEFENDANT IN ERROR.

BRIEF OF MR. FOSTER, Counsel for the Defendant in Error.

THE question presented upon this record is, whether the salary of a judge of probate in Massachusetts, payable from the treasury of that state, can be legally taxed as income under the internal revenue laws of the United States. This question is to be solved by an examination into the nature of the state and federal governments, and the relations which they respectively sustain to each other; and into the nature and extent of the power of taxation which they both possess.

1. Each state of the Union, within the limits of its jurisdiction, is just as independent of the federal government, as that government, within its enumerated powers, is independent of the states. "The powers of the general government and of the State, although both exist and are exercised within the same territorial limits, are yet separate and distinct sovereignties, acting separately and independently of each other within their respective spheres." The sphere of action appropriated to each is as far beyond the reach of the other, "as if the line of division was traced by landmarks and monuments visible to the eye." The complex character of the two governments is such that there exist "two distinct and separate sovereignties within the same territorial space, each of them restricted in its powers, and each within its sphere of action prescribed by the Constitution of the United States, independent of the other." *Ableman* v. *Booth*, 21 Howard, 516. "Each is sovereign and independent in its sphere of action, and exempt from the interference or control of the other, either in the means

employed or functions exercised. *Bank of Commerce* v. *New York City*, 2 Black. 635. "The people of each state compose a state, having its own government and endowed with all the functions essential to separate and independent existence. In many articles of the Constitution the necessary existence of the states, and, within their proper spheres, the independent authority of the states is distinctly recognized." *Luke Co.* v. *Oregon*, 7 Wallace, 76.

2. The power of taxation is an inherent attribute of sovereignty which every government must possess as indispensable to its independent existence; and, except where there are constitutional restrictions upon it, this power is co-extensive with and measured by the extent of the sovereignty which imposes the tax. It is a right which in its nature acknowledges no other limits. "That the power to tax involves the power to destroy; that the power to destroy may defeat and render useless the power to create; that there is a plain repugnance in conferring on one government a power to control the constitutional measures of another . . . are propositions not to be denied." *McCullough* v. *Maryland*, 4 Wheaton, 430. "The right of taxation, when it exists, is necessarily unlimited in its nature. It carries with it inherently the power to embarrass and destroy." *Austin* v. *Boston*, 7 Wallace, 699. "A government whose powers executive, legislative or judicial, are subject to the control of another distinct government, cannot be sovereign or supreme, but is subordinate and inferior to the other. Its functions and the means essential to the administration of the government and the employment of them, are liable to constant interruption and possible annihilation. What avail is the function or means if another government may tax it at discretion? It is apparent that the power, function or means, however important and vital, are at the mercy of that government." *Bank of Commerce* v. *New York City*, 2 Black. 634.

3. The precise converse of the present case was decided in *Dobbin* v. *Commissioners of Erie Co.*, 16 Peters, 435. There, under a law of the State of Pennsylvania, a tax was imposed on "the emoluments of the office" of the captain of a United States revenue cutter. It was said by the Court to be "levied on a valuation of the income of the office." p. 445. And it was held that this could not be done constitu

tionally. By parity of reasoning, this authority is decisive of the question now under discussion. The plaintiff in error can escape from it only by denying that the states have any powers co-ordinate with those of the United States. He must concede that when one government has the power to tax another, the one liable to be taxed is necessarily subject and subordinate to the one which has the power to tax. According to the theory which he is bound to maintain, it follows inevitably, that we do not live under a complex system of state and federal governments, each independent within its sphere, but that the continued existence of the states depends on the moderation and forbearance of the United states in the exercise of its taxing powers.

The decisions already cited conclusively prove that the right of the state to exist as a body politic, to have a government with executive, legislative and judicial departments, to have state offices filled and their duties performed, does not depend upon the will or forbearance of Congress. But if state offices or their emoluments are taxable at all by the federal government, that taxation may be carried to the point of destruction. To admit the principle, is to admit the power of Congress to tax every State government out of existence.

4. In *Veazie Bank* v. *Fenno*, 8 Wallace, 847, it was conceded by the majority of the Court that "the reserved rights of the states, such as the right to pass laws, to give effect to laws through executive action, to administer justice through the Courts, and to employ all necessary agencies for legitimate purposes of state government, are not proper subjects of the taxing power of Congress." The minority of the Court expressed themselves as follows: "This taxation of the powers and faculties of the state governments, which are essential to their sovereignty, and to the efficient and independent management and administration of their internal affairs, is for the first time advanced as an attribute of federal authority. It finds no support or countenance in the early history of the government, or in the opinions of the illustrious statesmen who founded it. These statesmen scrupulously abstained from any encroachment upon the reserved rights of the states; and, within these limits, sustained and supported them as sovereign states." The division of opinion among the members of the court seems to have related solely to the character of the particular tax, the validity of which was contested; viz., a tax on the circulation

of banks incorporated by state legislation. Apparently there was entire unanimity in recognizing as an indisputable principle of constitutional law "the exemption of the reserved powers of the states from impairment by taxation." If any such principle exists, surely the present case falls fully within its scope.

5. No valid distinction can be drawn between the taxation of an office itself *co nomine*, and the taxation in a general assessment upon incomes of the salary or emoluments of an office, which are the legal compensation for the performance of official duties, and are presumed to be only such adequate remuneration as is requisite to secure the services of a competent incumbent. In each case it is held to be a fatal objection to the power to lay such a tax; that if admitted to exist at all, there can be no limit to the extent to which the imposition may be carried. The office taxed exists only at the mercy of the taxing power.

The taxes adjudged invalid in *Weston* v. *Charleston*, 2 Peters, 449, and in *Dobbin* v. *Commissioners of Erie County*, 16 Peters, 435, were income taxes, and this point was fully discussed in each of those cases. The same distinction was again brought before the court in *Bank of Commerce* v. *New York City*, 2 Black. 630. In that case, as it had been uniformly before, the distinction was rejected as untenable, although it had been sustained by the Court of Appeals, 23 N. Y. 192. It is therefore believed to be unnecessary in the present state of the authorities to re-open its discussion. An income tax assessed in general terms diminishes the compensation of a public officer just as effectually as if specifically imposed on his office. The fatal difficulty remains, that the power of one government to tax in any way the functions, instrumentalities or revenues of another, or the compensation paid by another government to its public officers, is wholly incompatible with any power of self-preservation, or right of independent existence on the part of the government liable to such taxation.

In conclusion, the defendant in error respectfully refers the court to the elaborate opinion of Mr. Justice Clifford in the cause below, copies of which are herewith submitted.

DWIGHT FOSTER,
of Counsel for JOSEPH M. DAY.

2. Rawle 73.

5. N.J.